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child by increasing the potential sources of support funds;¹⁴³ on the basis of the decision, both parents will be required to contribute support payments according to their financial capabilities.¹⁴⁴ It is submitted, therefore, that the *Carter* court has adopted a reasonable and desirable interpretation of Family Court Act sections 413 and 414 which hopefully will be accepted by other New York courts.

INSURANCE LAW

Legislature amends New York's No-Fault Statute

In order to insure prompt and equitable compensation for victims of automobile accidents, and reduce the necessity for expensive personal injury litigation, the legislature in 1973 adopted a "no-fault" insurance statute.¹⁴⁵ Although some authorities heralded this legislative enactment as an insurance premium reducing device, recent years have witnessed a steady increase in the cost of automobile insurance.¹⁴⁶ Prompted by these rising costs, as well as abuses of the original statute,¹⁴⁷ the New York Legislature recently amended the no-fault law,¹⁴⁸ effecting significant changes in the statutory scheme.

¹⁴³ See *Bauer v. Bauer*, 55 App. Div. 2d 895, 897, 390 N.Y.S.2d 209, 212 (2d Dep't 1977) (mem.) (Latham, J., concurring). DRL § 240 directs the supreme court in any marital action to consider "the best interests of the child" in determining the award for custody and support. See *O'Shea v. Brennan*, 88 Misc. 2d 233, 387 N.Y.S.2d 212 (Sup. Ct. Queens County 1976) wherein the court noted that children should be afforded "[t]he right to the most adequate level of economic support that can be provided by the best efforts of both parents." *Id.* at 236, 387 N.Y.S.2d at 215.

¹⁴⁴ See *Fox, Divorcee Held Liable to Share Child Support with Ex-Husband*, N.Y.L.J., July 26, 1977, at 1, col. 2.

¹⁴⁵ Ch. 13, §§ 1-11, [1973] N.Y. Laws 56. See *Montgomery v. Daniels*, 38 N.Y.2d 41, 49-51, 340 N.E.2d 444, 448-50, 378 N.Y.S.2d 1, 7-9 (1975); Governor's Memorandum on Approval of ch. 13, N.Y. Laws (Feb. 13, 1973), reprinted in [1973] N.Y. Laws 2335 (McKinney).

¹⁴⁶ See, e.g., *Cerra, Auto Premiums Up 100% for Many New Yorkers*, N.Y. Times, July 25, 1976, § 1, at 1, col. 1.

¹⁴⁷ Memorandum of State Executive Department, reprinted in [1977] N.Y. Laws 2445, 2452 (McKinney).

¹⁴⁸ Ch. 892, §§ 1-17, [1977] N.Y. Laws 1824 (McKinney). According to the State Executive Department, the purpose of the legislation is:

To amend the State's No-Fault Automobile Insurance Law to eliminate various costly abuses, more adequately protect the victims of uninsured drivers, permit greater protection for insured drivers; and to contain the costs of automobile comprehensive and collision coverages by requiring insurers to inspect automobiles, verify their existence and determine their values in advance of loss; and to make other appropriate changes in the automobile insurance system.

Memorandum of State Executive Department, reprinted in [1977] N.Y. Laws 2445 (McKinney). The need for a change in the law has been recognized by authorities who have realized the many problems created by the original statute. One commentator has noted that:

A major aspect of the original no-fault legislation was the imposition of a serious injury standard¹⁴⁹ as a prerequisite to an action by a "covered person" against another covered person for "non-economic loss."¹⁵⁰ This requirement could be satisfied by demonstrating, under an objective test, that the medical expenses resulting from the injury exceeded \$500.¹⁵¹ The amendment has eliminated the threshold amount, substituting in its stead a purely verbal definition of serious injury. Under the new provision, a suit may be maintained whenever an automobile accident causes

[A] personal injury which results in death; dismemberment; significant disfigurement; a fracture; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.¹⁵²

Statutes rising from hybrid roots of scholarship, public relations saturation, misguided "consumerism," and interest-group pressure are likely to develop into legislative-rein forests. In such legal topography, the legislative "will" is often a mutation (writ "compromise"), representing a last-minute mid-ground between that which is saleable to a thin majority and that which is wise, workable, and complete. The New York statute still popularly referred to as the "no-fault bill" has not escaped these realities.

Schwartz, *No-Fault Insurance: Litigation of Threshold Questions Under the New York Statutes—The Neglected Procedural Dimension*, 41 BROOKLYN L. REV. 37, 37-39 (1974) (footnotes omitted).

¹⁴⁹ Ch. 13, § 1 [1973] N.Y. Laws 56, 57 provided in part: "'Serious injury' means a personal injury: (a) which results in death; dismemberment; significant disfigurement; a compound or comminuted fracture; or permanent loss of use of a body organ, member, function or system" It is interesting to note that there exists a dearth of cases construing this subsection, probably due to the relatively simple definitions contained in it.

¹⁵⁰ *Id.* at 59.

¹⁵¹ *Id.* at 57. Prior to the 1973 no-fault law, 65% of all automobile law suits involved medical expenses of less than \$500. Therefore, the \$500 threshold was expected to reduce litigation substantially. N.Y. Times, Dec. 26, 1976, at 44, cols. 2-3.

¹⁵² N.Y. Ins. Law § 671(4) (McKinney Supp. 1977-1978) (effective Dec. 1, 1977). It became apparent that the \$500 threshold had failed to reduce litigation as much as had been predicted. N.Y. Times, Dec. 26, 1976, § 1, at 44, cols. 2-3. Five hundred dollars in medical expenses immediately became a target, *id.*, and "doctors and lawyers working together in many instances have arranged to use the no-fault benefits for medical bills to make sure that such bills exceed the \$500 threshold figure." O'Connell, *Operation of No-Fault Auto Laws: A Survey of the Surveys*, 56 N.E.B. L. REV. 23, 33 (1977) [hereinafter cited as *No-Fault Auto Laws*]. Thus, the average medical bill in 1975 was \$508. While the caseload was expected to be reduced by 80% by the 1973 law, state officials estimated that by 1976 the total number

Judicial interpretation of this passage undoubtedly will be necessary.¹⁵³ In carrying out this task, it is suggested that the New York judiciary turn for guidance to the decisions of jurisdictions which have adopted similar provisions.¹⁵⁴ Such an approach should prove

of cases dropped by approximately 50%. N.Y. Times, Dec. 19, 1976, § 4, at 8, col. 2. One positive feature of no-fault, however, was the achievement of prompt payment to accident victims entitled to first party benefits. N.Y. Times, Dec. 26, 1976, § 1, at 44, cols. 2-3.

Early in 1976, the state began considering seriously alternatives to the \$500 threshold. Superintendent of Insurance Harnett suggested initially an increase of the threshold to \$2000. See N.Y. Times, Jan. 25, 1976, § 1, at 1, col. 5; at 30, cols. 3-4. Various other proposals included outright elimination of the threshold, suggested by the New York State Trial Lawyer's Association, and the elimination of no-fault, proposed by New York State Senator Schermerhorn. See N.Y. Times, Apr. 22, 1977, at A14, cols. 3-5. Governor Carey proposed a bill which included a threshold of "significant and permanent injury" or long-term disability: "death, disability resulting in at least 150 days of work or significant and permanent loss of use or limitation of use of a body organ, member, function or system." *Id.* This definition was not adopted, because it proved to be too elusive and controversial. According to Superintendent Harnett, the "loss of one finger would be regarded as a significant injury to a violinist, but not to an office worker." L. Greenhouse, *Carey Moves to Cut No-Fault Cost*, N.Y. Times, Apr. 21, 1977, at D20, cols. 2-3. The late Dean Ralph Semerad favored the retention of the \$500 threshold: "The threshold has done its job. . . . It has cut down automobile claims 70 percent statewide since it was instituted." Dean Semerad believed the real problem centered around property damage claims. Meislin, *Bar Supports Carey on No-Fault Suits*, N.Y. Times, Apr. 29, 1977, at D15, col. 3.

¹⁵³ See N.Y. INS. LAW § 671(4) (McKinney Supp. 1977-1978). Certain phrases such as "death," "dismemberment," and "fracture" should present no construction difficulty.

¹⁵⁴ No-fault laws have been enacted in 24 states since 1970. *No-Fault Auto Laws*, *supra* note 152, at 23. See ARK. STAT. ANN. §§ 66-4014 to -4021 (Supp. 1975); COLO. REV. STAT. §§ 10-4-701 to -723 (1973 & Supp. 1976); CONN. GEN. STAT. §§ 38-319 to -351a (1977); DEL. CODE tit. 21, § 2118 (1974 & Supp. 1976); FLA. STAT. ANN. §§ 627.730-.741 (West 1972), *repealed* 1976 FLA. LAWS ch. 76-168, § 3 (effective July 1, 1982); GA. CODE §§ 56-3401b to -3413b, -9915.2 (Supp. 1976); HAW. REV. STAT. §§ 294-1 to -16, -24 to -41 (Supp. 1975); KAN. STAT. §§ 40-3101 to -3121 (Supp. 1977); KY. REV. STAT. §§ 304.39-010 to -340, -.99-050 (Supp. 1976); MD. INS. CODE ANN. art. 48a, §§ 538-546 (Supp. 1977); MASS. GEN. LAWS ANN. ch. 90, §§ 34A, 34D, 34H, 34K, 34M-34O (West Supp. 1977-1978); *id.* ch. 231, § 6D (West Supp. 1975); MICH. COMP. LAWS ANN. §§ 500.3101-.3179 (Supp. 1977-1978); MINN. STAT. §§ 65B.14, -.41-.71 (Supp. 1977); NEV. REV. STAT. §§ 698.010-.510 (1973); N.J. STAT. ANN. §§ 39:6A-1 to -20 (West 1973 & Supp. 1977-1978); N.Y. INS. LAW §§ 670-678 (McKinney Supp. 1977-1978); N.D. CENT. CODE §§ 26-41-01 to -19 (Supp. 1977); OR. REV. STAT. §§ 743.800-.835 (1975); PA. STAT. ANN. tit. 40, §§ 1009.101-.701 (Purdon Supp. 1977-1978); S.C. CODE §§ 56-11-10 to -800 (1976 & Supp. 1977); S.D. COMPILED LAWS ANN. §§ 58-23-6 to -8 (Supp. 1977); TEX. INS. CODE ANN. art. 5.06-3 (Vernon Supp. 1976-1977); UTAH CODE ANN. §§ 31-41-1 to -13.4 (1974 & Supp. 1977); VA. CODE §§ 38.1-380.1 to 380.2 (1976 & Supp. 1977).

Among the states which allow suit for pain and suffering based upon either a monetary threshold or a verbal definition are Massachusetts, Florida, Connecticut, New Jersey, and Pennsylvania. The Massachusetts statute provides in pertinent part, that suit may be brought when medical expenses are in excess of \$500, or when "injury, sickness or disease . . . causes death, . . . or consists in whole or in part of permanent and serious disfigurement, or results in . . . loss of sight or hearing, . . . or consists of a fracture." MASS. GEN. LAWS ANN. ch. 231, § 6D (West Supp. 1975). For a discussion of the Massachusetts no-fault statute, see Donahue & Sugarman, *The Automobile Reparation System in Massachusetts—Has No-Fault Insurance in Massachusetts Improved the System?* 8 FORUM 11 (1972). The Florida statute requires that medical expenses exceed \$1000, or that there be "permanent disfigure-

helpful in ameliorating the construction problems posed by the new definition,¹⁵⁵ and thereby preclude the increase in litigation which otherwise might result from the amendment. By employing a technique which discourages an increase in litigation, the courts would be furthering the basic intent underlying enactment of no-fault legislation.¹⁵⁶

ment, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death." FLA. STAT. ANN. § 627.737 (West 1972). Suit is permitted in Connecticut when injuries result in "(1) death, (2) permanent injury, (3) fracture of any bone, (4) permanent significant disfigurement, (5) permanent loss of any bodily function, (6) loss of a body member or" (7) where expenses exceed \$400. CONN. GEN. STAT. § 38-323 (1977). New Jersey bars a pain and suffering action where the injured party has damage only to soft tissue and incurs less than \$200 worth of medical expenses, but allows suit to be brought where the result of the injury is "death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member in whole or in part" N.J. STAT. ANN. § 39:6A-8 (West 1973). Legislation in Pennsylvania imposes liability if there is "(A) death or serious and permanent injury; or (B) the reasonable value of reasonable and necessary medical and dental services . . . is in excess of seven hundred fifty dollars . . . ; or (C) medically determinable physical or mental impairment which prevents the victim from performing all or substantially all of the material acts and duties which constitute his usual and customary daily activities and which continues for more than sixty consecutive days; or (D) injury which in whole or in part consists of cosmetic disfigurement which is permanent, irreparable and severe." PA. STAT. ANN. tit. 40, § 1009.301(a)(5) (Purdon Supp. 1977-1978). For a discussion of the Pennsylvania law, see 80 DICK. L. REV. 335 (1976). Finally, Michigan utilizes only a verbal definition, allowing suit where "death, serious impairment of body function or permanent serious disfigurement" results from the injury. MICH. COMP. LAWS ANN. § 500.3135 (Supp. 1977-1978).

¹⁵⁵ In upholding its state's no-fault legislation in the face of a constitutional challenge, the Michigan Supreme Court noted that terms such as "serious" and "permanent" "have been construed from early dates." *In re Request of the Governor*, 389 Mich. 441, 478-79, 208 N.W.2d 469, 480-81 (1973). The court went on to enumerate a number of decisions interpreting such words. *Id.* nn.9-11, 208 N.W.2d at 480-81 nn.9-11.

Jurisdictions with no-fault statutes in effect have begun to evolve working definitions of the various terminology employed in threshold provisions. In construing the New Jersey requirement of "permanent significant disfigurement," the court in *Falcone v. Branker*, 135 N.J. Super. 137, 342 A.2d 875 (Super. Ct. Law Div. 1975), looked to Workmen's Compensation decisions interpreting the phrase "permanent serious disfigurement." The court reasoned that the no-fault term "significant" should be read as having the same meaning as the Workmen's Compensation word "serious." Since a serious and thus a significant disfigurement is one which "'substantially detracts from the appearance of the [injured] person,'" *id.* at 146, 342 A.2d at 879 (emphasis in original), the court concluded that a ¼-inch long scar on the tip of the nose was not a significant disfigurement. *Id.* at 150, 342 A.2d at 882. Further insight may be gleaned from a Florida case in which the court construed the term "permanent injury" to "include permanent subjective complaints of pain resulting from an initial organic injury." *Johnson v. Phillips*, 345 So. 2d 1116, 1117 (Fla. Dist. Ct. App. 1977).

¹⁵⁶ No-fault is predicated upon the desirability of avoiding litigation. See text accompanying note 145 *supra*. An increase in litigation due to a need for judicial interpretation of the statute would seem to undermine that purpose:

[W]hen the decision that an injury falls within the class of injuries that, under no fault, should be excluded from judicial remedy is only made when the litigation process has been completed, much of the desired efficiency is lost.

McKendrick v. Petrucci, 71 Mich. App. 200, 211, 247 N.W.2d 349, 354 (Ct. App. 1976).

Even assuming, however, that the new threshold is precisely defined, it does not appear that the amendment will lead to a reduction in the cost of insurance or in the number of accident-injury suits filed in the courts.¹⁵⁷ One factor militating in favor of this conclusion is the new law's effect with respect to fractures. Prior to the amendment, an action could be maintained for noneconomic loss sustained by virtue of a "compound or comminuted fracture."¹⁵⁸ Since the recent legislation deleted the adjectives, any fracture presumably will satisfy the serious injury requirement.¹⁵⁹ A possibility therefore exists that suits involving limited pain and suffering will be encountered on a regular basis; yet the very purpose of the no-fault concept is to eliminate litigation stemming from nonserious injuries.¹⁶⁰ Perhaps the legislature should reexamine this troublesome provision and reinstate the former statutory language. No legitimate cause of action would be denied should something more serious than "any fracture" be the threshold, as other aspects of the serious injury definition furnish ample coverage.¹⁶¹

As originally enacted, the no-fault statute permitted claimants to choose binding arbitration as a method of resolving disputes concerning first party benefits.¹⁶² The amendment excised the word

¹⁵⁷ See N.Y.L.J., July 14-15, 1977, at 1, col. 5.

¹⁵⁸ See ch. 13, § 1 [1973] N.Y. Laws 5657. A comminuted fracture exists when "the bone is broken into a number of pieces." *STEDMAN'S MEDICAL DICTIONARY* 631 (Law Ed. 2d 1966). A compound fracture is "one in which there is an open wound of the soft parts leading down to the seat of the fracture." *Id.*

¹⁵⁹ See N.Y. INS. LAW § 671(4) (McKinney Supp. 1977-1978).

¹⁶⁰ Recognizing this problem, one commentator opined that given the aggressive personal-injury bar and the money that can be made by pressing fault-based claims[,] [w]hy . . . pass a reform that leaves intact the claims which led to the need for reform in the first place, counting on human nature to forego taking advantage of the right to press those claims?

No-Fault Auto Laws, *supra* note 152, at 29.

¹⁶¹ While a simple fracture of a finger would not be actionable under the fracture provision, for instance, someone such as a concert pianist or a surgeon who requires full dexterity, would have access to the courts by virtue of the provision allowing suit for an injury which prevents a person from performing his daily activities. See N.Y. INS. LAW § 671(4) (McKinney Supp. 1977-1978).

¹⁶² Ch. 13, § 1 [1973] N.Y. Laws 56-60. Section 1 defined first party benefits as "payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle" *Id.* at 57. Section 1 provided that "[p]ayment of first party benefits shall be made as the loss is incurred." Section 1 further provided:

Every owner's policy of liability insurance . . . shall also provide for . . . payment of first party benefits to:

- (a) persons, other than occupants of another motor vehicle, for loss arising out of the use or operation in this state of such motor vehicle; and
- (b) the named insured and members of his household for loss arising out of the use or operation in this state of an uninsured motor vehicle.

Id. at 58.

"binding" and created an additional step in the procedure: "An award by an arbitrator may be vacated or modified by a master arbitrator in accordance with simplified procedures to be promulgated or approved by the [insurance] superintendent."¹⁶³ It is suggested that this provision may be inconsistent with the objective of arbitration, which is "to dispose of the controversy, finally and conclusively."¹⁶⁴ To achieve this goal, an arbitrator's decision usually is made binding,¹⁶⁵ and judicial review of the award is severely limited.¹⁶⁶ Review by a master arbitrator under the new procedure,

¹⁶³ N.Y. INS. LAW § 675(2) (McKinney Supp. 1977-1978).

¹⁶⁴ R. COULSON, LABOR ARBITRATION—WHAT YOU NEED TO KNOW 51 (1973) [hereinafter cited as COULSON]. The power of an arbitrator is derived from law and the agreement of the parties and the extent of his authority is determined by that agreement. *Id.* at 55.

¹⁶⁵ See *id.* at 66. Although it is within the authority of the legislature to provide for broad review of the arbitrator's decision, the binding nature of the award "is one of the salient features of arbitration." M. TROTTA, LABOR ARBITRATION 87 (1961). Thus, an arbitration award may not be appealed on the merits: "The absence of an appeal procedure prevents long drawn out litigation that is often so characteristic of our courts." *Id.*

Other methods employed to settle disputes, such as mediation, factfinding and advisory arbitration, often have more than a single level process. A mediator has no authority to render a final and binding decision, but can suggest a solution. A factfinding board determines the issues in dispute, the parties' positions on these issues, and may recommend solutions. *Id.* at 34. Under a system of advisory arbitration, the arbitrator renders an award which is not binding on the parties. See COULSON, *supra* note 164, at 54.

¹⁶⁶ See COULSON, *supra* note 164, at 66. The grounds enumerated in CPLR 7511 for vacating or modifying an arbitrator's award are:

(b) Grounds for vacating.

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

- (i) corruption, fraud or misconduct in procuring the award; or
- (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or
- (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter was not made; or
- (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

2. The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that:

- (i) the rights of that party were prejudiced by one of the grounds specified in paragraph one; or
- (ii) a valid agreement to arbitrate was not made; or
- (iii) the agreement to arbitrate had not been complied with; or
- (iv) the arbitrated claim was barred by limitation under subdivision (b) of section 7502.

(c) Grounds for modifying. The court shall modify the award if:

1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or

however, need not be so narrowly circumscribed. Moreover, because judicial review under CPLR article 75 has not been eliminated, the alteration seems likely to prolong conflicts and increase costs without giving rise to any corresponding benefits.¹⁶⁷

Commendably, several changes in the first party benefits area were designed to reduce premium costs. Foremost among these changes is the adoption of Workmen's Compensation rates as the measure of recovery for accident victims,¹⁶⁸ which is expected to lower insurance costs by halting inflated billing.¹⁶⁹ In addition, insurance companies no longer will be obligated to pay first party benefits where the injured party recovers or is entitled to recover such compensation from certain other sources.¹⁷⁰ This latter addition is expected to eliminate double recovery and thereby favorably affect insurance rates. Finally, under a new provision, insured per-

2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. the award is imperfect in a matter of form, not affecting the merits of the controversy.

See generally W. BAER, *THE LABOR ARBITRATION GUIDE* 2-3 (1974); COULSON, *supra* note 164, at 51; M. TROTTA, *LABOR ARBITRATION* 115-16 (1961).

¹⁶⁷ One commentator has noted that the amendment permits "a second bite of the apple," N.Y.L.J., July 14-15, 1977, at 1, col. 3, perhaps implying that the purpose of the original provision was to eliminate long and costly procedures.

¹⁶⁸ N.Y. INS. LAW § 678 (McKinney Supp. 1977-1978). It recently has been reported that some physicians have threatened to deny treatment to accident victims in reaction to the new rate schedules. See *Newsday*, Dec. 6, 1977, at 7; N.Y. Times, Dec. 31, 1977, at B3, col. 4.

¹⁶⁹ See Memorandum of State Executive Department, reprinted in [1977] N.Y. Laws 2445, 2449-51 (McKinney). The resulting reduction in premiums may not be significant. See N.Y. Times, July 13, 1977, at B4, cols. 3-4.

¹⁷⁰ See N.Y. INS. LAW § 671(1) (McKinney Supp. 1977-1978). The bill is intended to "exclude monetary payments received by an employee when such payments do not result in a reduction of the employee's income, . . . thus eliminat[ing] double recovery in those situations in which no true loss of earnings has occurred." Memorandum of State Executive Department, reprinted in [1977] N.Y. Laws 2445, 2448 (McKinney). Section 671(1) states in part:

An employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle, shall not be entitled to receive first party benefits for "loss of earnings from work" to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury.

N.Y. INS. LAW § 671(1)(c) (McKinney Supp. 1977-1978). In addition, § 671(2) eliminates receipt of first party payments to the extent that an injured party recovers or is entitled to recover medicare or Workmen's Compensation benefits. *Id.* § 671(2)(b). In accordance with this new policy, § 205(10) of the Workmen's Compensation Law, which denied Workmen's Compensation benefits to persons who received under a no-fault policy, was repealed. Ch. 892, § 16, [1977] N.Y. Laws 1836 (McKinney).

sons voluntarily may reduce their coverage and hence their premiums for basic economic loss to the extent of their coverage under health insurance plans.¹⁷¹

Although several sections of the recent no-fault amendment appear to deal adequately with provisions of the original statute that were susceptible to exploitation and abuse, the major thrust of the legislation, a change in the definition of a serious injury, probably will not lead to a substantial reduction in litigation. It therefore is hoped that the legislature will monitor closely the operation of the statute and revamp it as necessary to attain the objectives underlying the no-fault concept.

DEVELOPMENTS IN NEW YORK LAW

Appropriation of public personality held actionable.

Section 51 of the Civil Rights Law, which grants a cause of action for damages to "any person whose name, portrait, or picture" is used for commercial purposes without his written consent,¹⁷² con-

¹⁷¹ N.Y. INS. LAW § 672(7) (McKinney Supp. 1977-1978). The new legislation also requires insurers to offer higher deductibles to policy holders. *Id.* § 167(d)(iii); Memorandum of State Executive Department, reprinted in [1977] N.Y. Laws 2445 (McKinney), wherein it was stated:

The requirement that insurers offer a variety of higher deductibles, would reduce rates for those retaining the \$200 standard deductible or electing a higher deductible. In many cases those electing higher deductibles will be in a position to utilize tax offsets to greatly minimize the real loss suffered.

Id. at 2457.

It should be noted, however, that there is "considerable indication that any price rise in auto insurance has been due not to difficulties under inadequate no-fault laws, but to rapidly rising prices, a factor applicable to all auto insurance, in fault-based states and no-fault states alike." *No-Fault Auto Laws*, *supra* note 152, at 35. The state, according to former Superintendent of Insurance Harnett, is powerless to prevent premium increases occasioned by the rising price of such items as replacement parts for automobiles. Greenhouse, *Carey Moves to Cut No-Fault Costs*, N.Y. Times, Apr. 21, 1977, at 1, col. 2.

¹⁷² N.Y. CIV. RIGHTS LAW § 51 (McKinney 1976) provides in pertinent part:

Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait or picture, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by the last section, the jury, in its discretion, may award exemplary damages.

In addition to the civil cause of action provided by § 51, the Civil Rights Law provides a misdemeanor penalty for the nonconsensual use of a name, portrait, or picture:

A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having